* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: July 13, 2007.
Date of decision: August 24, 2007.

\+ **WRIT PETITION (C) Nos. 1680-81/2004**
& CM No. 1454 of 2004

RAM PRASAD & ANR. ..... Petitioners
Through Mr. L.C.Chechi, Advocate.

versus

Union of India & Ors. ..... Respondents
Through Mr. Gaurav Sarin with Ms. Charul Sarin, Advocate for DDA.
Mr. Pushkar Sood, Advocate for R-1.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

JUDGMENT

: Dr. S. Muralidhar, J.

1. The Petitioners seek the quashing of a Notification dated 20.8.1974 issued by the Union of India under Section 22 of the Delhi Development Act, 1957 ('DD Act') and for a direction restraining Respondents from denying access to the land admeasuring 4 bighas and 1 biswas in Khasra No. 173 and 1 bigha in khasra No. 596/172 in village Tehkhand, New Delhi ('the land in question'). An alternative prayer is for a direction to the Respondents to hand over possession of the lands in question to the Petitioners "if they are found in possession" or direct the Respondents to acquire the land and pay compensation to the Petitioners.

2. According to the Petitioners, the land in question in village Tehkhand was in the ownership and joint possession of Shri Asha

Ram, Shri Harpal and Shri Nepal, sons of Shri Sunehri, Shri Therikha son of Shri Muluk and Shri Ramchander and Shri Ram Prasad sons of Shri Ram Swaroop. It is stated that although the land in question was cultivated by these persons during the years 1958, 1959 and 1960, the revenue records for the year 1953-54 showed the land as *banjar kadim* and, therefore, the Gaon Sabha was shown to be in possession of the land. According to the Petitioners the land was wrongly shown to be Gaon Sabha land since it formed part of the Petitioners' holding in view of the Explanation to Section 7 of the Delhi Land Reforms Act, 1954 ('DLRA').

3. A civil Suit No. 450 of 1960 was filed by the aforementioned persons against the Gaon Sabha for a declaration that the land in question was not Gaon Sabha land and for a direction that it should not be shown as such in the revenue records. Although the suit was dismissed by the learned Sub-Judge, the Appeal filed by the said persons, being Appeal No. 259 of 1961, was allowed by the learned Additional District Judge by the judgment and order dated 23.5.1962. The decree, therefore, become final. It is stated that after the amendment to the DLRA by introduction of Section 161 B, the Union of India filed a Revision Petition challenging the said judgment dated 23.5.1962. The revision petition was dismissed on 23.4.1968 by the Additional Senior Sub-Judge, Delhi after noticing the fact that the copy of the *jamabandi* for the year 1947-48 showed that the land in question was in the possession of the decree holders and that this position continued even during the *fasli* year 1954. The petition was held to be not maintainable in terms of Section 161 B (1) DLRA.

4. It is stated by the petitioners that a part of the land i.e. 1 bigha

and 5 biswas in khasra No. 173 was acquired under the Land Acquisition Act 1894 (LAA) and compensation was paid on 14.5.1971 to the aforementioned persons consequent to a Reference Petition No. 82 of 1969 under Sections 30/31 LAA based on the decree dated 23.5.1962. Thereafter the aforementioned persons continued in khasra No. 576 of 1962 in village Tehkhand.

5. The village Tehkhand was urbanised in 1966 by a notification dated 28.5.1966 of the Delhi Administration. The land in question thereafter stood transferred to the DDA by the impugned Notification dated 20.8.1974. However, according to the Petitioners, the said Notification was vague as it did not mention the specific khasra Nos. pertaining to the land in question. It is stated that Petitioner No.1 Shri Ram Prasad sold to Petitioner No.2 the right title and interest in the remaining land measuring 4 bighas and 1 biswas in Khasra No. 173 and 1 bigha in Khasra No. 576 through an agreement to sell and a special power of attorney dated 6.11.1980. The Petitioners contended that in view of the above facts the Union of India could not have, in exercise of the powers under Section 22 of the DD Act, placed the management and control of the land in question with the DDA by the impugned Notification dated 20.8.1974.

6. This petition was filed on 3.2.2004. A similar petition, W.P. (C) No. 5382 of 2001, challenging the same impugned Notification was dismissed by this Court as withdrawn.

7. In its short reply filed on 1.11.2004 the Respondent DDA has taken the stand that the land in question has been shown and continues to be shown in the revenue records as Gaon Sabha land. It

is further submitted that an appeal arising from a similar petition from the same village raising similar pleas in respect of certain other lands in village Tehkhand was decided by the Hon'ble Supreme Court in ***Gaon Sabha v. Nathi*** (2004) 12 SCC 555 [judgment dated 23.3.2004 in C.A. No. 3105 of 1997]. The Hon'ble Supreme Court held that the DLRA is a complete code in itself and a civil court would have no jurisdiction to adjudicate the issue whether the land in question is a *banjar qadim* or *ghair mumkin pahar* or *ghair mumkin khandrat*. A reference was made to an earlier decision in ***Hatti v. Sunder Singh*** (1970) 2 SCC 841 where it had been held by the Hon'ble Supreme Court that after the coming into force of the DLRA, the proprietors of agricultural land ceased to exist. If any land was part of the holding of a proprietor, he became its *Bhumidar*. However, if the land was not *Sir* or *Khudkasht* of a proprietor it would not be his holding and such land would vest in the Gaon Sabha under Section 154. Any person seeking a declaration of his rights as a *Bhumidar* had to first approach the Revenue Assistant in terms of Section 84 DLRA read with Item 19 of the First Schedule thereof. It is further pointed out by the DDA the Hon'ble Supreme in ***Gaon Sabha v. Nathi*** rejected a similar prayer. After the issuance of the impugned notification under Section 22 the land in question stood vested in the DDA and Petitioner No.1 became an encroacher. Consequently the alleged transfer of the land by Petitioner No.1 by way of sale to Petitioner No.2 was invalid and Petitioner No.2 is liable to be ejected from the land in question in terms of Sections 42 and 43 DLRA. The DDA has submitted that the petition is barred by laches since the Petitioners have approached this Court, 30 years after the impugned notification was issued and after 24 years after the sale of the land in question by Petitioner No.1 in contravention of Section 33

DLRA.

8. Mr. Chechi, learned Advocate appearing for the Petitioners contends that the land in question is liable to be exempted in terms of the Explanation to Section 7 DLRA and, therefore, the land could not be stated to have been vested in the Gaon Sabha. With the dismissal of the revision petition of the Union of India under Section 161B DLRA it cannot be denied that the lands in question were owned by the Petitioners. Moreover, the impugned notification did not specify the particular khasra Nos. pertaining to the land in question and therefore the said lands could not be stated to have vested in the DDA. In any event since the Explanation to Section 7 DLRA applied, the decree in the Suit was valid and binding.

9. Appearing for the DDA, Mr.Gaurav Sarin, learned Advocate submitted that even if the petitioners were seeking to assert any rights flowing from the Explanation to Section 7 DLRA they could not have filed a suit in the civil court. The decision of the Hon'ble Supreme Court in ***Gaon Sabha v. Nathi*** was in a case dealing with this very village and therefore the present case is entirely covered by the said decision.

10. In his rejoinder, Mr. Chechi submitted that the land in question, would be governed by the Delhi Panchayat Raj Act, 1954 also and the question whether it was Gaon Sabha land would have to be considered in terms of Section 36 of that statute which permits the filing of a suit in the civil court in addition to approaching the Revenue Assistant under the DLRA. He further tried to distinguish the decision of the Hon'ble Supreme Court in ***Nathi*** on the ground

that the said decision, which was by a Bench of two Hon'ble Judges, did not notice an earlier judgment of a larger Bench in ***Gulabbhai Vallabbhai Desai v. Union of India*** AIR 1967 SC 1110.

11. Taking up the last submission for consideration first, this Court finds that the decision of the Hon'ble Supreme Court in ***Nathi*** covers the facts of the present case on all fours and this Court is bound by the said decision. If the Petitioners seek the reconsideration of the said decision, their remedy lies elsewhere. A prayer for distinguishing the binding judgment of the Hon'ble Supreme Court cannot be entertained by this Court. In any event this Court finds that the decision in ***Gulabbhai Vallabbhai Desai v. Union of India*** did not deal with the provisions of the DLRA at all.

12. The facts in ***Gaon Sabha v. Nathi*** are more or less similar to the facts of the present case. The dispute in the said case was about the right of the respondents therein to receive land acquisition compensation in respect of land that vested in the Gaon Sabha. By a decision dated 22.2.1986 the learned ADJ held in favour of the Gaon Sabha. The aggrieved persons then approached this Court which allowed the Appeal on 7.11.1991 following the earlier judgment dated 30.5.1991 in ***Sher Singh v. Union of India***. The matter was thereafter carried by the Gaon Sabha in appeal to the Hon'ble Supreme Court. In the said case the Deputy Commissioner had passed an order under Section 7(2) DLRA vesting of the land in the Gaon Sabha. Thereafter a suit was filed in the civil court seeking a declaration that the vesting of the land in the Gaon Sabha of Tehkhand was illegal and had no effect on the rights of the Plaintiffs and other co-owners. It was observed by the Hon'ble Supreme Court

that (SCC, p.559):

> "The plaintiffs claimed that they were proprietors in possession of the land which was shown as *gair Mumkin Pahar* and *banjar qadim* in khasra girdwari in the year 1953-54. Alternatively the plaintiffs claimed that they were in cultivatory possession of the land and accordingly became *Bhumidar* thereof and further as the land was *Gair Mumkin Pahar* it could not vest in the Gaon Sabha."

13. The Hon'ble Supreme Court also noticed that this Court had in ***Sher Singh*** relied on the earlier decision in ***Union of India v. Mamleshwar Prasad*** (1991) 4 Delhi Lawyer 375 which had held that "land other than "*khud khast*" of the holding of the individual proprietor did not vest in Gaon Sabha because it has not been treated as waste land by virtue of exception provided under clause (1)(a) of Explanation of Section 7 read with definition of holding in the Punjab Land Revenue Act, 1987. Further, same mode for purposes of vesting waste land in Gaon Sabha has been adopted for purposes of Section 154 of the Act." Accordingly, in ***Sher Singh*** it was held by this Court that the disputed land could not be held to be waste land within the meaning of Section 7(1) DLRA and, therefore, the vesting of the land in the Gaon Sabha was not correct.

14. The Hon'ble Supreme Court then discussed the definition of "holdings" in Section 3 (11a) DLRA, of "*khudkasht*" in Section 3 (12 A) DLRA and of a *Bhumidar* and *Asami* in the context of Sections 5 and 6 DLRA respectively. It was found that except for the lands in respect of which there was a *Bhumidar* or an *Asami*, all other kinds of land would vest in the Gaon Sabha. It was held that the Respondents in that case neither claimed to be *Bhumidar* nor an *Asami* and therefore it was only the Gaon Sabha in which the lands stood vested on the

commencement of the DLRA. Further, following the decision in ***Hatti v. Sunder Singh*** it was held that civil court did not have any jurisdiction to entertain a suit seeking a relief of declaration of *Bhumidari* rights. Therefore the decree passed in the civil suit, including the decision arising therefrom of the High Court was held to be "wholly without jurisdiction".

15. The Court also rejected the contention that a Notification under Section 7(2) DLRA cannot be issued in regard to the land in dispute since it was a waste land. The Court held (SCC, p. 568):

> "We are unable to accept the contention made. The definition of "waste land" in Explanation (i) appended to Section 7 is inclusive definition and the only exception is "uncultivated land included in the holding of such proprietors". The expression "such proprietor" here refers to such types of persons who are described in main part of sub-section (1) of Section 7. As mentioned earlier the disputed land was not included in the holding of the respondents and therefore a notification under section 7(2) could validly be issued with regard to the land in disputed."

The Hon'ble Supreme Court also held that the decision of this Court in *Mamleshwar Prasad* was "legally incorrect."

16. This Court finds that there is nothing in the case on hand that distinguishes it from the case decided by the Hon'ble Supreme Court in ***Gaon Sabha v. Nathi***. All the arguments made here have been considered and rejected by the Hon'ble Supreme Court. Principally, the plea that the petitioners here had a decree in their favour from the civil court is to no avail in light of the said decision. Therefore, there is no legal infirmity in the impugned notification issued under Section 22 DD Act. For the reasons already explained, Mr. Chechi's

plea that the decision ***Gaon Sabha v. Nathi*** requires to be reconsidered cannot be entertained by this Court. Although there is merit in the other plea of the DDA that the present petition is barred by laches this Court is of the considered view that it should fail even on merits.

17. For all of the above reasons, the writ petitions are dismissed with no order as to costs. The application stands dismissed accordingly.

S. MURALIDHAR, J.

August 24, 2007
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